

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAUDO FOFANA, a/k/a Muhammad Fofana,) Case No. C06-869-JLR-JPD
Petitioner,) CR04-511-JLR
v.) REPORT AND RECOMMENDATION
UNITED STATES OF AMERICA,)
Respondent.)

Petitioner is a federal prisoner currently serving a two-year term of supervised release at the Northwest Detention Center in Tacoma, Washington, in the custody of United States Immigration and Customs Enforcement (ICE) pursuant to 18 U.S.C. § 3624(e).¹ Petitioner has filed a motion under 28 U.S.C. § 2255 seeking to vacate, set aside, or correct his 2006 federal court sentence. Respondent has filed a response opposing petitioner's motion. After careful consideration of the motion, supporting materials, governing law and the balance of the record, the Court concludes that petitioner's § 2255 motion should be DENIED.

¹ On March 27, 2006, the district court entered judgment against petitioner, sentencing him to twelve days confinement, with credit for twelve days served, followed by the two-year term of supervised release. *See United States v. Fofana*, CR04-511-JLR, Dkt. Nos. 186, 190 (W.D. Wash. 2006).

01 A review of the history of petitioner's underlying criminal case reveals that
02 petitioner's direct appeal of that case is still pending before the United States Court of
03 Appeals for the Ninth Circuit. *See Fofana v. United States*, Case No. 06-30196 (9th Cir.)
04 (filed March 27, 2006). In addition to this direct appeal, it appears that petitioner has two
05 other appeals pending before two different courts: (1) a *pro se* appeal pursuant to 28 U.S.C. §
06 2241 pending before the Ninth Circuit under the title *Fofana v. Melendez*, Case. No. 06-
07 35622 (9th Cir.) (filed July 25, 2006); and (2) a BIA appeal of the August 3, 2005 decision
08 made by the immigration judge regarding petitioner's removal.

09 Absent "extraordinary circumstances," a district court should not entertain a
10 petitioner's collateral attack on a conviction while that petitioner also has a direct appeal
11 pending in the Ninth Circuit. *See United States v. LaFromboise*, 427 F.3d 680, 686 (9th Cir.
12 2005) ("[U]ntil direct appellate review is exhausted the district court may not entertain a
13 motion for habeas relief."); *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987) (same).
14 To do so would thwart judicial economy. *See United States v. Deeb*, 944 F.2d 545, 548 (9th
15 Cir. 1991); *Feldman*, 815 F.2d at 1320 ("The reason for this rule is that disposition of the
16 appeal may render the [petition] unnecessary.") (internal quotations omitted); *see also* Rules
17 Governing § 2255 Proceedings for the United States District Courts, Rule 5, Adv. Comm.
18 Notes (rule reflects a prudential concern and not a jurisdictional bar). Accordingly, the Court
19 recommends that petitioner's petition be DISMISSED without prejudice. A proposed Order
20 accompanies this Report and Recommendation.

21 DATED this 22nd day of September, 2006.

22 
23 JAMES P. DONOHUE

24 United States Magistrate Judge